



## Guide to the availability of live links in magistrates' courts under their criminal and civil jurisdiction

(while Coronavirus Act 2020 is in force)

On 5<sup>th</sup> January 2021 the Lord Chief Justice issued a message, following the government announcement of further restrictions due to the Coronavirus pandemic, saying,

**“remote attendance of all or some of those involved in hearings is the default position in all jurisdictions”.**

### Summary

Sections 53 - 56 Coronavirus Act 2020 make temporary amendments to existing legislation around the use of live links in courts and tribunals.

A live audio link requires everybody taking part to be heard and be able to hear what is said, and in the case of a live video link, to be seen and be able to see the speaker (subject to special measures) as well. If at any time these criteria are not satisfied the hearing should be paused and attempts made to rectify the link. Where a link cannot be re-established, the court may need to consider rescinding the direction reasons for which are required to be entered in the register.

A direction may be made either on application or of the court's own motion. For many hearings, the law requires courts to give reasons if they do *not* make a live link direction.

A live link direction may be made by the court, a single justice or a legally qualified authorised court officer.

### Proceedings wholly v. partially by live link

Some proceedings can be held as wholly live link proceedings, i.e. no-one is present in court. These proceedings are listed in Schedules 3A of the CDA and the CJA.

In cases where hearings are not permitted wholly by live link, at least one participant must be present at court. This will normally be the legal adviser, court associate or judiciary.

### Some general principles

- The court can NEVER accept a guilty plea from a defendant when any person is participating by live **audio** link
- Non-defendants can NEVER give evidence by live **audio** link UNLESS there are no suitable arrangements for them to give evidence by live **video** link AND the parties agree

### Open Justice

Courts should follow guidance on media access. Where proceedings are conducted wholly by link, the court can make a direction to record or broadcast the hearing.

<b>Key:</b>	Permitted	With restrictions (see right hand column)	Not permitted
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Nature of the hearing	Governing legislation	Reasons required if <b>not</b> using LL?	Video permitted?	Audio permitted?	Wholly video?	Wholly audio?	Applicable Restrictions
Bail decision before conviction or where there is a right to bail after conviction	s.57A(3), s.57B(8) CDA Sch. 3A Para 3	Yes	Yes		Yes	No	No-one other than witnesses may take part through audio where the court refuses or revokes bail and D objects to that.  Other people may take part through audio for the sole purpose of giving evidence where video is not available and parties agree.  “Bail” includes remand to local authority accommodation  An audio hearing is permissible to consider bail conditions, even if the hearing is contested
Bail decision after conviction	s.51(2)(h), (10) & (11) CJA Sch. 3A Para 1(6) (7)	Yes	Yes	Yes	Yes		Wholly audio hearing is permissible to consider bail conditions or where there is no right to bail <i>or</i> the making of the decision is not disputed
Preliminary hearing where a not guilty plea is expected (includes allocation and Sending)	s.57A(3) CDA s.57B(8) – (9) CDA	Yes	Yes		Yes		Note restrictions on hearings where bail is in dispute, above.  Court may <b>not</b> accept a guilty plea where any person (other than a witness) is on audio link  There is a risk in beginning a hearing by audio if there is a possibility that the defendant might indeed plead guilty or bail is contested.
Preliminary hearing where	s.57A(3) CDA s.57B(8) – (9)	Yes	Yes	No	Yes	No	Court may not refuse or revoke bail where D is on audio link unless D does not object. Court may not accept a

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a guilty plea is expected	CDA Sch. 3A para 6						guilty plea where any person (other than a witness) is on audio link.
Sentencing (including <i>Newton</i> hearings, and breach, amendment & revocation)	s.57A(3) CDA s.57E CDA Sch. 3A para 9	Not unless an application for LL is made	Yes		No	No	D may not take part via audio. Other people may take part through audio for the sole purpose of giving evidence where video link is not available, and parties agree.
Summary trial where proceedings commenced by SJP notice	s.51(2)(a) CJA Sch. 3A Para 2(8)	Not unless an application for LL is made	Yes			No	Proceedings can be wholly video only if parties agree D may not take part by audio link Others may take part by audio for the sole purpose of giving evidence where video link is not available. All parties must agree to a person giving evidence by live audio link <i>Note: a Single Justice Procedure Notice is called a "Written Procedure Notice" in Schedule 23 of the Coronavirus Act; this is an error due to the Schedule being extracted from a wider Bill which renamed it thus.</i>
Summary Trial (other than SJP proceedings),	s.51(2)(a) CJA Sch. 3A Para 4	Not unless an application for LL is made	Yes		No	No	D may not take part by audio link Other persons may take part by audio for the sole purpose of giving evidence where video link is not available, and parties agree.

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			Permitted	With restrictions	Not permitted	Not permitted	<p>A written notice of intention to have a video link trial must be served on D (except SJP proceedings)</p> <p>All parties must agree to a person giving evidence by live audio link</p>
Case management (directions, binding rulings, special measures, bad character, ground-rules etc)	s.57A(3) CDA s.57B (9) CDA	Yes	Permitted	Permitted	Permitted	Permitted	<p>D may not give evidence by audio link</p> <p>Others may not give evidence by audio unless video link is not available, and parties agree</p> <p>If any person, other than a witness, is taking part by audio link, the court may not accept a guilty plea</p>
Custody time limit application	Prosecution of Offences Act 1985 s.22 and regulations	No	Permitted	Permitted	Permitted	Permitted	Note, if there is to be a contested bail application in the hearing, the rules on bail must be applied.
Enforcement Hearings (including confiscation)	s.57F CDA Sch. 3A Paras 12-13	Yes	Permitted	With restrictions	Permitted	Not permitted	<p>D may not give evidence by audio</p> <p>Others may not give evidence by audio link unless video link is not available and parties agree</p> <p>D may not take part by audio if the court is minded to impose imprisonment in default</p> <p>If any person, other than a witness, takes part by audio, the court cannot impose imprisonment or detention</p>

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Nature of the hearing	Governing legislation	Reasons required if <b>not</b> using LL?	Video permitted?	Audio permitted?	Wholly video?	Wholly audio?	Applicable Restrictions
Preliminary hearing of appeal to Crown Court	s.51(2)(b) CJA Sch. 3A Para 1 (2)		Yes	Yes	Yes	Yes	
Applications to reopen/slip rule	s.51(2)(fa) CJA Sch. 3A Para 2 (9) & 4	Not unless application for LL refused	Yes	No	Yes	No	D may not take part by audio Other person may take part by audio link for the sole purpose of giving evidence where video link not available and parties agree
Remand for Medical Examination (s11 PCC(S)A 2000) and subsequent hearings under s81(1)(g) SCA81 or s16 CJA03	s.51(2)(ca)-(cc) CJA Sch.3A Para 4	Not unless application for LL refused	Yes	No	No	No	At least one participant must be at court D cannot take part by audio Other persons may take part by audio for sole purpose of giving evidence where video link not available and parties agree
Fitness to plead hearings (Crown Court)	s.57B CDA Sch. 3A Para 5	No	Yes		No	No	D may not take part by audio
Proceedings under Part 3 MHA83: hospital	s.51(2)(cb) CJA	No	Yes		No	No	D may not give evidence by audio

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Nature of the hearing	Governing legislation	Reasons required if <b>not</b> using LL?	Video permitted?	Audio permitted?	Wholly video?	Wholly audio?	Applicable Restrictions
orders etc including “act or omission” hearings			Permitted	With restrictions	Not permitted	Not permitted	
Warrant of further detention	s.45ZB PACE	No	With restrictions	Not permitted	With restrictions	Not permitted	Only if a custody officer considers link appropriate, the prisoner has had legal advice on use of the link, they (or their parent or carer if a child or vulnerable) have consented, and it is not contrary to the interests of justice to give the direction.
Contempt of Court	Sch. 3A Paras 4, 14 CDA Sch. 3A para1(8) s.51(12) CJA	No	Permitted	With restrictions	Not permitted	Not permitted	If the court is minded to deal with a person for contempt, that person may not take part by audio. Other persons may take part by audio for the sole purpose of giving evidence where video link is not available, and parties agree
Extradition	s.206A EA	Yes	Permitted	Not permitted	Permitted	Not permitted	The amendments to the EA have not changed the definition of live link to include audio for any person.
Search warrants etc	Criminal Procedure Rule 47.25	No	Not permitted	Not permitted	Permitted	Permitted	

## **The Civil Jurisdiction of Magistrates' Courts**

When dealing with a matter under Part II Magistrates' Courts Act 1980 ("MCA"), the court may proceed in the absence of either or both parties (ss.55-57 MCA). This means that where a court can proceed where a party is absent, it can proceed where the party is absent but participating through a link.

However, in civil proceedings conducted under the MCA, there is no provision for wholly video or audio hearings. They are the creation of statute, solely in relation to criminal proceedings. So the court – even if made up solely of judiciary and legal adviser or court associate – must sit in public, and that effectively means a courthouse.

Rule 3A Magistrates' Courts Rules 1981 ("MCR") requires a court actively to manage the case by giving directions, including with regard to the use of technology. A court, a single justice or a legally qualified authorised officer may make those directions. Directions may be made on application or of the court's own motion and may be made with or without a hearing. The Rules specifically allow directions to be given, and representations or applications received by letter, telephone or other means of electronic communication, and case management hearings may be conducted by these means.

This will include proceedings brought under s.63 MCA for breach of a court order. Thus, an alleged breach of a DVPO, for example, could be the subject of live link directions made under Rule 3A MCR. Although these are civil matters, the outcome is akin to a criminal penalty. We would therefore recommend that, when making directions in such cases, decision makers should have regard to the general principles provided by the Coronavirus Act amendments to the criminal legislation. Thus, defendants should not be permitted to take part in substantive hearings by live audio link, and other persons should only be permitted to take part by live audio link for the purpose of giving evidence where video link facilities are not available, and the parties agree.

This also includes proceedings under the civil proceeds of crime jurisdiction, for example cash seizures and restraining orders.

The Coronavirus Act 2020 in its amendment of the MCA specifies that hearings should be by live video link when dealing with appeals against requirements or restrictions imposed on a potentially infectious person. If video link would be contrary to the interests of justice, a single justice or legally qualified authorised court officer may direct an audio link or live hearing instead, for any or all of the persons taking part.

Proceedings which are not required to be in open court can be conducted by wholly video or audio link. These are usually applications to a "justice of a peace", such as mental health warrants, utility warrants, or other right of entry warrants.

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Nature of hearing	Legislation	Reasons required if <b>not</b> using LL?	Live video link permitted?	Live audio link permitted?	Applicable restrictions
Proceedings on complaint or application	ss.53 & 55 MCA	No	Yes	Yes	
Contempt of Court	Sch. 3A Paras 4, 14 CDA  Sch. 3A Para 1(8)  s.51(12) CJA	No	Yes		<b>Recommendation:</b> If the court is minded to deal with a person for contempt, that person may not take part by audio. Other persons may take part by audio for the sole purpose of giving evidence where video link is not available, and parties agree
Civil contempt under s 63(3) MCA 1980 (including breach DVPO)	ss.53 & 55 MCA	No	Yes		Defendant may “appear” but proceedings in absence – i.e. by audio link - require a summons  See above recommendation where court contemplating imprisonment.
Enforcement of a liability order: means enquiry leading to commitment or disqualification	Rule 47(2) Council Tax (A&E Regulations) 1992, Rule 16(2), Non-Domestic Rating (C & E) Regulations 1989,  s.40 Child Support Act 1991	No	No	No	



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Enforcement of a liability order: other sanction including activation of postponed commitment	As above	No	Yes	Yes	
Appeal against requirement/restriction by potentially infectious person	s.57ZA-ZF MCA Coronavirus Act 2020 Sch. 25	No, reasons must be given for not using	Yes – default position	Yes	Presumption is in favour of video link, but court may direct that one or more persons may take part by live audio link if video link would be contrary to the interests of justice
Rights of entry warrants, mental health warrants etc	Various	No	Yes	Yes	Can be wholly video link or audio link as proceedings are not required to be in open court
Other applications to a “justice of the peace”	Various	No	Yes	Yes	Can be wholly video link or audio link as above